

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

Careywood, ID Contract Postal Unit
Careywood, ID 83809

Docket No. A2015-2

**UNITED STATES POSTAL SERVICE RESPONSE IN OPPOSITION TO
PETITIONER'S EMERGENCY REQUEST**
(March 31, 2015)

This matter commenced when the Postal Regulatory Commission (Commission) received a petition from Ms. Marrion Newsam Banks (Petitioner) alleging that the Commission's jurisdiction under 39 U.S.C. § 404(d) extends to an appeal of a contract renewal decision concerning contract number 2DCPAC-15-B-0007, which governs operation of the Careywood, ID contract postal unit (CPU).¹ On March 24, 2015, Petitioner filed an erratum to her appeal and revised her appeal to include an application for suspension, in which she requested the Commission to suspend the effectiveness of the Final Determination to discontinue the Careywood, ID CPU.² On March 27, 2015, Petitioner filed an "Emergency Request for Injunctive Relief," in which she renewed her request for the Commission to suspend the effectiveness of the

¹ Petition for Review Received from Marrion E. Newsam Banks (Petitioner) Regarding the Careywood, ID Post Office, PRC Docket No. A2015-2 (March 19, 2015). The Commission also received several letters from postal customers. See Letter Received from Mark Glenn Regarding the Careywood, ID Post Office, PRC Docket No. A2015-2 (March 19, 2015); Letter Received from Emily Palmer Regarding the Careywood, ID Post Office, PRC Docket No. A2015-2 (March 19, 2015); Letter Received from Nova Jo Kellogg, PRC Docket No. A2015-2 (March 23, 2015); and Letter and Petition from Senator Mike Crapo Regarding the Careywood, Idaho Post Office, PRC Docket No. A2015-2 (March 25, 2015).

² Errata to Petition for Review Received from Marrion E. Newsam Banks, PRC Docket No. A2015-2 (March 24, 2015).

Final Determination to discontinue the Careywood, ID CPU.³ On March 27, 2015, the Postal Service filed a Motion to Dismiss the appeal in which it argued that the Commission lacks subject matter jurisdiction to consider the appeal.⁴ The Motion to Dismiss also responded to Petitioner's application for suspension.⁵

ARGUMENT

The Commission is unable to grant the relief requested by Petitioner. As argued by the Postal Service in its Motion to Dismiss, Petitioner's appeal is not within the scope of the Commission's jurisdiction under 39 U.S.C. § 404(d) because the petition requests the Commission to review a contract renewal decision concerning a contract governing the operation of a CPU. Section 404(d) does not apply to the Postal Service's management of its contracts, or to the operation of a retail facility whose existence derives solely from the terms and conditions of a voluntary contract.⁶ Accordingly, a contract renewal decision concerning a contract governing the operation of a CPU does not fall within the Commission's section 404(d) jurisdiction.

Moreover, the Commission does not have the authority to grant the injunctive relief requested. The Commission's rules of practice and procedure, as applicable to Post Office Closing appeals, are outlined in 39 C.F.R. Part 3025. At its essence, Petitioner's March 24 and March 27, 2015 pleadings request that the Commission order the Postal Service to renew its contract with the operator.

³ Petitioner's Emergency Request for Injunctive Relief and Suspension of Closure Pending Commission Review of this Appeal, PRC Docket No. A2015-2 (March 27, 2015).

⁴ United States Postal Service Motion to Dismiss Proceedings and Response in Opposition to Petitioner's Application for Suspension (Motion to Dismiss), PRC Docket No. A2015-2 (March 27, 2015).

⁵ *Id.*

⁶ 39 U.S.C. § 404(d).

This relief is not available under 39 C.F.R. Part 3025 as the Commission does not have the authority under section 404(d) to order the Postal Service to enter into or preserve into perpetuity a contractual agreement with a supplier.

The Commission's rules of practice and procedure provide that a petitioner may file an Application for Suspension of "a determination of the Postal Service to close or consolidate any [P]ost [O]ffice pending the outcome of an appeal."⁷ This does not provide for the preliminary injunctive relief requested by the Petitioner. In instances where the Commission does have jurisdiction to review a Final Determination under section 404(d), the only interim relief available is for the Commission to suspend the effectiveness of the determination. Even if the Commission chose to interpret the Petitioner's "Emergency Request for Injunctive Relief" as a renewed application for suspension under section 404(d), such an application is still beyond the Commission's jurisdiction in this case. As the Postal Service argued in its Motion to Dismiss, there has been no determination of the Postal Service to discontinue a Post Office. Rather, the action in question relates to a contract renewal decision, which is outside the Commission's section 404(d) appeal jurisdiction.

CONCLUSION

For the reasons set forth above, and in the Postal Service's Motion to Dismiss, Petitioner's March 24, 2015, Application for Suspension and Emergency Request for Injunctive Relief filed on March 27, 2015, should be denied.

⁷ 39 C.F.R. § 3025.30(a).

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Anthony F. Alverno

Chief Counsel

Global Business & Service Development

Caroline R. Brownlie

Laura Zuber

475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137
(202) 268-6036; Fax -6279
March 31, 2015